

# **EXHIBIT A**

1                   THE COURT: Or it is the message that specifies?

2                   MR. STEVENS: Yes, sir.

3                   THE COURT: Okay.

4                   MR. STEVENS: So I think the dispute here, Your  
5 Honor -- you brought up not wanting an *02 Micro* fight later on  
6 in this case, and that's why we're raising this now, to put  
7 everyone on notice that we think there is a lurking fight here  
8 about this particular construction and what it means and what  
9 it doesn't mean.

10                  It's absolutely right that our construction is simply the  
11 words of the claim. You know, we think that must happen. If  
12 all parties agree that the message must specify a maximum  
13 number of bytes of memory, if we're all on the same page that  
14 the message must say something like max bytes equals 20, no  
15 fight at all. But I urge, Your Honor, that that's not going  
16 to be the case here in a couple of months; that there's going  
17 to be a different construction brought to you when we get a  
18 little bit further in the case.

19                  Now, if they're willing --

20                  THE COURT: What's your crystal ball tell you that  
21 that future construction from the Plaintiffs is going to be?

22                  MR. STEVENS: They're going to point to something  
23 that specifies a minimum number of bytes. So, for example, if  
24 the claim language were, I specify to Judge Gilstrap the  
25 maximum speed he's allowed to drive home today, I say Judge

1 Gilstrap can drive home no faster than 50 miles per hour, the  
2 analogy would be someone could come to you and say, No, no,  
3 no, no, no, you have 15 minutes to get home; that's the  
4 maximum amount of time; you need to drive at a speed -- you  
5 know, that's the minimum speed that you can get home. That's  
6 what we're going to see later in this case--that they're not  
7 going to point to something that is a max number of bytes;  
8 they're going to point to something that is a minimum number  
9 of bytes. That's going to be the fight that we're going to  
10 have here in a few months, and fear we're going to be right  
11 back in front of you with an *O2 Micro* fight.

12 Now, if counsel for the Plaintiff is willing to get up  
13 here and say, That's -- Mr. Stevens is crazy, he's wrong, you  
14 know, we're not going to point to anything that says max bytes  
15 equals a number, then maybe there isn't a fight, but if  
16 there's going to be a different interpretation in this case or  
17 a different argument that this claim is somehow satisfied by  
18 an entirely different parameter, I think we should hear that  
19 today. I think we should hear today what Plaintiff's position  
20 is going to be with respect to what it actually takes to  
21 satisfy this limitation.

22 We think it's very simple. Right? There has to be a  
23 message. The message must specify a maximum number of bytes  
24 of memory. If we all agree that that parameter must be  
25 specified in the message, then maybe we don't have a fight.

1       But if there's going to be some other interpretation or some  
2       other definition offered, I do think that, as the Defendants,  
3       we believe we should be entitled to hear that today.

4                   THE COURT: All right. Well, let's go around the  
5       merry-go-round one more time.

6                   Having heard that, Mr. Davis, let me hear your response.  
7       I'm not sure how you specify a maximum number by specifying a  
8       minimum number, but go ahead and tell me what your reaction  
9       is.

10          MR. DAVIS: I'm not either, Your Honor. And what I  
11       heard Mr. Stevens say is he wants to basically decide an  
12       infringement issue without any record of it, and he's -- he is  
13       assuming that we are going to be pointing -- what I heard him  
14       say is they're going to point to something that says  
15       'minimum'. You know, I'm not sure what he's referring to, but  
16       the claim says 'maximum'. So it seems to me, like, if we're  
17       at the summary judgment stage and we're pointing to something  
18       that says 'minimum' and doesn't have anything to do with  
19       'maximum', then, you know --

20          THE COURT: You may be in a bad position.

21          MR. DAVIS: We may be in a bad position. That's  
22       correct, Your Honor.

23                   And I just -- you know, I could take a stab at telling  
24       you our infringement theory on their product at this point,  
25       but I don't think that's the purpose of claim construction--to

1 pre-try or pre-judge or have Mr. Stevens try to pin us down on  
2 a very specific the message must say 'max bytes equals X'  
3 construction when that's not a construction they've proposed.

4 And the word says 'maximum'. And the example he said is  
5 they're going to point to something that says 'minimum'. I  
6 don't -- that's not right, Your Honor. And so the claim  
7 language itself addresses Mr. Stevens' concern where the claim  
8 says 'blue' and we're pointing to something that's white. I  
9 mean, if it's as binary and completely orthogonal as  
10 Mr. Stevens suggested, then, you know, that's -- I think  
11 that's a summary judgment issue and not a claim construction  
12 issue where they're proposing the exact same word that's in  
13 the claim.

14 And it's just -- it's really not appropriate to engage  
15 in -- to let the ultimate infringement question be litigated  
16 at the claim construction stage without a record of any of  
17 that.

18 That's our position, Your Honor. So we believe plain and  
19 ordinary is appropriate here.

20 THE COURT: Well, there's no dispute that both sides  
21 say plain and ordinary is appropriate. There seems to be some  
22 concern as to what plain and ordinary would be here. But I  
23 agree, at this point in the process I don't know how either  
24 the parties or the Court say 'max number of bytes equals X'  
25 must be a part of what is shown. Whatever is going to be

1 shown is going to be shown, and if it specifies a maximum  
2 number of bytes of memory, then it's going to meet this  
3 limitation; and if it doesn't, it doesn't.

4 And, quite honestly, by the time we get to summary  
5 judgment, both sides are going to know what the other side's  
6 position is a lot better than they may speculate about it  
7 today. And if at that point the Plaintiff's position has  
8 something to do with something other than the maximum number  
9 of bytes, whether it's by saying you have this much time to  
10 get home, you can drive any speed you want to, rather than you  
11 can't go above 50 miles per hour, that's the kind of thing I  
12 would expect to take up and rule on at summary judgment.

13 So I'm going to decline the polite invitation from both  
14 sides to go beyond plain and ordinary meaning at this point.  
15 But I'll say this, especially in light of this discussion,  
16 I'll also decline any opportunity or invitation from either  
17 side to open an *02 Micro* discussion post-summary judgment  
18 where one side or the other would have and should have and  
19 could have raised this issue then.

20 So it looks like to me I may well be revisiting this at  
21 summary judgment, but I'm happy to wait until summary  
22 judgment; just don't fail to raise it at all at summary  
23 judgment and then try to tell me in the middle of jury  
24 selection we've got an *02 Micro* problem.

25 But with that, I don't think there's any other benefit to